(1)

Supreme Court, U.S.
FILED

001547 FEB - 2 2001

OFFICE OF THE CLERK

No.

SUPREME COURT OF THE UNITED STATES

SUC. CECILIO HUERTAS BARBOSA, ET.AL.

Petitioners,

vs.

THE COMMONWEALTH OF PUERTO RICO., ET.AL.

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

Rafael A. Oliveras López De Victoria
Edif. Asociación de Maestros 609
452 Ponce De León Ave.
San Juan, Puerto Rico 00918
USDC-PR 119606
Telephone: 764-3280
Fax: 763-8328
Attorney for Petitioners

85pp

QUESTIONS PRESENTED BEFORE THE HONORABLE COURT AND COURTS BELOW

A. Whether or not the life, property and livelihood of the residents or citizens of a state are fundamental rights protected by the Fifth Amendment and the Fourteenth Amendment of United State Constitution?

B. Whether or not the state violates the Fifth and Fourteenth Amendments of U.S. Constitution, when statutes or laws of said states does not provide just, full and/or reasonable compensation to its victims, who have lost their life, limb and health and/or suffered in their livelihood, due to the State's (Commonwealth of Puerto Rico´s) wrongful and negligent acts and/or omissions?

C. Are the standards of Due Process under the U.S. Constitution met, with respect to a Puertorrican statute Title 32 LPR Section 3077 (a) that grants special privileges to the Commonwealth of Puerto Rico as a litigant in a state court and in prejudice of its citizens?

D. Whether or not the there is a direct violation of the Equal Protection Clause of the United States Constitution when the Commonwealth of Puerto Rico, as a party, limits its liability to the amount of $150,000.00, per occurrence, not withstanding the fact that the damages created by the negligence of the Commonwealth of Puerto Rico in equity and in justice exceeds $1,680,0000.00; as per the judgment of trial court?

E. Whether or not the Commonwealth of Puerto Rico has created, through its statute, Puerto Rico Public Law 104 of 1955, also known as the Law of Litigation against the State, a due process violation when it takes economic benefits or just compensation in an arbitrary and unreasonable manner? In short, whether or not Public Law 104, of 1955, violates Fifth Amendment regarding taking of property of a person without just compensation. In other words, if said statute is confiscatory in its nature and/or in its application.

F. Whether or not this Honorable Court has subject matter jurisdiction when a fundamental right of a citizen is violated by a state statute; not withstanding the Eleventh Admendment bar whereby a state cannot be sued in a United States District Court by a Plaintiff seeking damages?

G. Whether or not a citizen of a state can sucessfully invoke the jurisdiction of this Honorable Court as well as the U.S. District Court by secking declaratory judgment to declare unconstitutional Section 3077 (a)?

PARTIES TO THE PROCEEDING

The petitioners: CECILIO, DANIEL, SALVADOR SANTOS, HERMINIA ELMIS, MANUEL MINERVA, JOSEFINA, CARMEN IRIS, LUZ, MATEO Y FRANCISCO, all whose surname are HUERTAS LABOY; SANTOS HUERTAS LABOY Y CASIMIRA MARTINEZ and the Conjugal partnership composed of SANTOS LABOY Y CASIMIRA MARTINEZ, respectfully request that a Writ of Certiorari be granted in order to review a judgment of the United State Court of Appeals for the First Circuit.

For the Respondants - (Defendants), the Commonwealth of Puerto Rico is a party to these proceedings and was a party before the U.S. of Appeal, First Circuit as well as U.S. District Court. Its attorney for the record is the Attorney General for the Commonwealth of Puerto Rico, Honorable Roger Sabat, Esq., as well as the attorney for record, Griselle González, Federal Litigation Division. This statement is made in reference to Rule 29 (4) (c).

TABLES OF CONTENTS

	page
Question Presented	i
Parties to the Proceeding	iii
Table of Contents	iv
Table of Citations	v
Opinion Below	1
Statement of Jurisdiction	2
Constitutional and Statutory Provisions Involved	4
Statement of Case:	6
A. Main Facts	6
B. Trial Court Proceedings	8
C. Procedings After Trial	9
D. Proceeding in Appeal	10
E. Proceeding Before the U.S Disctrict Court	12
Reasons to Grant the Writ of Certiorari	13
A. Introduction	13
B. State And Federal Predicates	15
C. Fundamental Rights	17
D. Equal Protection and Due Process Analysis	18
E. Other Due Process and Equal Protection Considerations	21
F. Compelling State Interest Argument	24
G Compelling Reasons To Grant Certiorari	26
H. Jurisdictional Matters	27
Conclusion	29

TABLES OF CITATIONS

Cases Cited:	pages
Rooker v. Fidelity Trust, Co. 263 US 413	12
District of Columbia Court of Appeal v. Feldman, et.al., 460 US 462, 476.	12
Nibbia v. New York, 1934, 291 USA-502 16	14
Eastern Enterprises v. Apfels, 118 S. CT 2131, P. 2146	14
United States of America v. Winstar, Corp. (1976), 116 S. CT. 2431	15
Logan v. Zimmerman Brush, Co., 455 US 422, 430	15
Boddie v. Conneticut, 401 U.S. 371	15
Vda de Delgado v. Insurance Co. 101 DPR 598 (1973)	15,17
California Federal Bank v. United States ourt of Federal Claim, cases no. United Court of Federal Claims, 92-138 (c); December 22, 1997, Smith Chief Judge.	16
Publio Díaz v. E.L.A., 106 DPR 854 (1978)	17

Cases Cited:	**pages**
Mora v. Mejías, (1953) 206 F2d 371	18
Torres v. Castillo, 111 DPR 792,	19
Alicea v. Córdova, 117 DPR 676	19
Defendini Collazo v. E.L.A. 134 DPR 28	24
Cohen v. Virginia, (1821) 19 US 264	

Statutes Cited:	**pages**
28 USCA 1251	2
32 LPRA 3077	2
Law Number 104, June 29, 1955, (32 LPRA 3077 et.seq.)	14
Article 1802 and 1803 of Civil Code of Puerto Rico (31 LPRA 5142 and 5143)	15
Public Law 600, 81 Congress, July 3, 1950, C 446 64 Stat 314.	17
Joint Resolution of Congress of July 3, 1952 C 567, 66 Stat 327.	17
United States Constitution Cited:	
Fifth Amendment	4
Fourteenth Amendment	4
Thirteenth Amendment	23

statutes Cited: **Pages**

Constitution of Commonwealth of Puerto Rico:

Article III, Sec. 2 2
Article II, Section 7 4

Other Authorities Cited:

J.D. Lee and B.A. Lindahl, MODERN TORT LAW: LIABILITY AND LITIGATION, Illinois, Calaghan and Company, 1988, Vol. I, sec.16.01, page 553 16

James and Gray, "THE LAW OF TORTS", Boston, Little, Brown and Company 2 ed, 1986, Vol.5,page 596; 16

Jaffe, SUITS AGAINST GOVERNMENTS AND OFFICERS: SOVEREIGN IMMUNITY, 77 Harv. L. Rev. 1, 2-19 (1963). 16

Lawrence Tribe, AMERICAN CONSTITUTIONAL LAW, P. 1002. 19

APPENDIX

Appendix A:

Judgment of United States Court of Appeals (umpublished), for the First Circuit, entered on 1-2

November 7, 2000, in the case of Sucesión Cecilio Huertas Barbosa, et.als. v. Commonwealth of Puerto Rico, Civil Number 99-2345.

Appendix B:
Umpublished judgment of United States District Court, for the District of Puerto Rico, entered on October 27, 1999. In the case of Sucesión Cecilio Huertas Barbosa, et.als. v. Commonwealth of Puerto Rico, Civil Number 99-1624 (DRD). 3-4

Appendix C 1:
The Opinion of the Supreme Court of Puerto Rico (not published) can be found in Succession Cecilio Huertas vs. Hõspital Alejandro Buitrago, Civil Number CC1999-0373. 5-8

Appendix D:
The Opinion of the Circuit Court of Appeals, for the 9-17

---

[1] Notes: Appendixs, C, D and E were translated by Petitioners; however this Honorable Court may order the translation of said documents in accordance to Rule 30.

District of Puerto Rico, also not published can be found in Succession Cecilio Huertas vs. Hospital Alejandro Buitrago, Case Number KLAN1998-01438.

Appendix E: 18-37

Judgment of the Court of First Instance, Superior Part of Guayama entered on October 20,1998 in the case of Succession Cecilio Huertas vs. Hospital Alejandro Buitrago, Civil Number GDP1988-2291.

Appendix F:

Complaint 38-43

Petitioners, respectfully request that a writ of certiorari be issued to review the appellants proceedings before the lower court, infra.

OPINIONS BELOW

Judgment of the United States Circuit Appeal, First Circuit found in Sucesión Cecilio Huertas Barbosa, et.als. v. Alejandro Buitrago Hospital, Civil Number 99-2345. (Appendix A).

Unpublished Judgment of the U.S. District Court, District of Puerto Rico under Civil number 99-1624 (DRD). (Appendix B)

Unpublished resolution of the Supreme Court of Puerto Rico (not published) can be found in Succesión Cecilio Huertas vs. Hospital Alejandro Buitrago, Civil Number CC1999-0373. (Appendix C).

The Opinion of the Circuit Court of Appeals, for the District of Puerto Rico, also not published can be found in Succession Cecilio Huertas vs. Hospital Alejandro Buitrago, Case Number KLAN1998-01438. (Appendix D)

Lastly, the Court of First Instance, Superior Part of Guayama entered its final judgment on October 20,1998 in the case of Succession Cecilio Huertas vs. Hospital Alejandro Buitrago, Civil Number GDP1988-2291. (Appendix E).

STATEMENT OF JURISDICTION

Petitioner respectfully invokes the jurisdiction of this Honorable Court under Article III, Section 2 of the Constitution of United States of America and under Title 28 USCA 1251, et.al. to review a judgment entered and notified by the United States Court of Appeal, whereby a federal question under the Fourteenth Admendment presented; said judgment was entered on November 7, 2000, and notified in November 7, 2000.

Jurisdiction is sought, for there are grave constitutional violations under the Fourteenth Amendment, by a state law which infringes upon the fundamental right of its citizens with respect life, limb and livelihood, as express both in the Due Process Clause and the Equal Protection Clause of said amendments.

Petitioners respectfully understands that the Eleventh Amendment Immunity is not applicable in the present case when fundamental violation of the Fifth and Fourtheen Admendment occurr. Moreover, in the present case, a state complaint seeking damages was filed and judgment was entered by the State Court: Court of First Instance, Superior Division of Guayama, Puerto Rico. (See Appendix C).

Said trial court's judgment declared unconstitutional Section 3077 (a) of Title 32 of Laws of Puerto Rico anotated. For this reason alone the Eleventh Admedment is not applicable for a judicial determination against the Commonwealth of Puerto Rico was entered.

The sole reason for bringing a federal suit, as a declaratory judgment, before the U.S. District Court was to declare unconstitutional, as a matter of federal question, Section 3077 (a), supra, for it violates both the Fifth and Fourtheenth Admedment. This federal action was filed during the appelate procedure before the Puerto Rico Supreme Court of Puerto Rico (Appendix C) and after the Circuit Court of the Commonwealth of Puerto Rico entered its judgment whereby it revoked the Trial Court determination which declared Section 3077 (a) unconstitutional (Appendix D). See complaint filed before the U.S. District Court of Puerto Rico under Civil number 99-1624 (DRD) (Appendix F). Thus, to file said complaint earlier at trial level could be considered moot and premature.

Therefore, petitioners seeked a declaratory judgment, and its appellate review, with respect to the applicable federal constitutional doctrine under the United States of Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the Constitution of United States provides in its relevant part:

> "No person shall be deprived of life, liberty of property, without due process of law; nor shall private property be taken for public use, without just compensation." (Emphasis Supplied)

The Fourteenth Amendment of the Constitution of United State provides in Section 1, the following:

> "Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis supplied)

Article II, Section 7 of the Constitution of the Commonwealth of Puerto Rico provide in relevant part:

> "7. Right to life, liberty, and enjoyment of property; no death penalty; due process; equal protection of laws;

impairment of contracts; exemption of property from attachment

The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws." (Emphasis supplied)

Article 2 (a) of the Law of Claims against the State (32 LPRA 3077 (a) States in its relevant part:

"(a) Actions for damages to a person or property up to the sum of seventy-five thousand (75,000) dollars caused by a culpable or negligent act or omission of any official, agent, or employee of the Commonwealth, or of any other person acting in an official capacity within the scope of his duty, office, or employment. Where such action or omission causes injury to more than one person, or where a single injured party is entitled to several causes of action, the compensation for damages caused by such action or omission shall not exceed the sum of one hundred and fifty thousand (150,000) dollars.

STATEMENT OF THE CASE

A. MAIN FACTS

The tragic facts of this prolonged case date back to 1988[2]. At the time, the Santos Huertas and Julia Laboy were happily married for more than thirty (30) years. During their marriage they procreated and raised fourteen (14) children in the rural area of Patillas, Puerto Rico. Both Julia Laboy and Santos Huertas were healthy and proud couple, whom had their children in a humble but righteous way. Mrs. Julia Laboy was a housewife while Santos Huertas was a sugarcane farmer.

On or around September 1988, Julia Laboy visited Dr. Luis Rodríguez González, a private gynecologist, who had his office in Guayama, Puerto Rico. After a clinical evaluation in his office, Dr. Rodríguez recommended a hysterectomy. This elective surgery was performed on September 24, 1988 at the Alejandro Buitrago Hospital, a state run hospital located at Guayama Puerto Rico.[3]

---

[2] The Court of First Instance in its judgment, illustrates the tragic miscarriage of justice for its took almost ten years to solve the present case not withstanding the fact that the codefendant Commonwealth of Puerto Rico did not offer no any voluntary compensation to the victims at the onset of the case nor any credible defense. The Commonwealth of Puerto Rico at the trial did not even present any witness nor expert witness to prove its case! (Emphasis supplied) (Appendix E)

[3] Since the Alejandro Buitrago Hospital was a state run--facitily, the Commonwealth of Puerto Rico was a proper party.

In the morning of September 25, about 8:00 A.M., Luz M. Huertas Laboy , daughter of Julia Laboy observed that her mother was cold, sweaty, weak and with great difficulty in breathing and in opening her eyes. Due to said precarious condition, Luz M. Huertas Laboy desperately requested to the nursing staff that her mother be examined by a physician. A clinical examination, by performed by a physician, other than Dr. Luis Rodríguez González, revealed a blood pressure of 90/80, and tachycardia. She was found that she also had problems in orientation. The examining physician indicated to Luz M. Huertas Laboy that her mother could be bleeding internally. Laboratories were ordered to confirm or reject these clinical findings. Later that morning the same revealed very low and dangerous levels of hemoglobin (8mg). These laboratory findings confirm that she suffered from internal bleeding. At this point in time nothing was done in said hospital . Julia Laboy was again seen by various physician around 2:04 P.M. to 7:10 P.M. During this lapse of time, Julia Laboy became weaker and she further deteriorated in her health. At midnight and early morning of September 26, 1988 and after suffering for almost thirteen (13) hours of Julia Laboy was admitted by the Dr. Nido Laracuente for a surgery for a exploratory laparactomy to determine the source of said hemorrage. A massive hemorrhage was discovered within the abdominal cavity with a laceration to her spleen. Dr. Rodríguez González never appeared.

Once surgery was concluded, Mrs. Julia Laboy was admitted to the intensive care unit for

her medical condition was extremily serious and catastrophic. To make matters worse, there was no compatible blood available at Alejandro Buitrago Hospital´s blood bank. Numerous phone contacts to obtain blood compatible with Julia Laboy Rosa were made. However, the same were too late and around 8:00 A.M., Julia Laboy Rosa died. Upon her death, doctor Francisco J. Landron, a forensic pathologist, performed a autopsy which revealed that the cause of death was due to massive internal hemorrhage due to a laceration of the spleen.

B. TRIAL COURT PROCEEDING:

On 1988, a malpractice complaint was filed whereby Petitioners claiming mental and moral damages for the wrongful death of their mother. After numerous procedural discovery proceeding, various pre-trial hearings and a delay attributed to defendants, (specifically the Commonwealth of Puerto Rico), a trial date was set on March, 1998, almost 10 years of Mrs. Julia Laboy's, death.

Expert testimony by Dr. Vicent Wade Master, a board qualified gynecologist- obstetrician, demostrated that the mismanagement of Mr. Julia Laboy Rosa´s operation and post surgical procedures. He testified that negligence existed in the following areas:

First, the surgery performed was not the appropiate one; instead of a vaginal hysterectomy procedure, an open laparactomy was performed this brought the laceration of spleen. Second, Alejandro Buitrago Hospital´s personnel fail to request and obtain sufficient blood as part of presurgical

procedures, in case that an emergency could occurr (Mrs. Julia Laboy Rosa died of a hypovolemic shock due to lack of blood). Third, investigation on the medical record revealed that Alejandro Buitrago Hospital's failed to promptly execute emergency laparoctomy in order stem the loss of blood. Fourth, no objective diagnostic tests such as a sonogram or computarized tomography that could evidence abdominal internal bleeding.

At said trial, the codefendant Commonwealth of Puerto Rico did not present any expert witness to challenge the findings of Dr. Masters nor any lay witness. All the plaintiff testified, with the exception of Mateo Huertas Laboy, who had become mentally disabled due to the death of his parents. The trial court concluded that the plaintiffs' testimony were genuine, real, serious and undismissable. The trial judge noted the Plaintiffs' tears, patent sadness and anguish. Specifically, the Court noted the uncontainable tears of Santos Huertas Laboy, the elderst sibling, when he testified to the Court that he had to assume the role of a parent at a early age. The Court also noted Dr. Nido Laracuente, detail testimony who felt incapable of saving Julia Laboy Rosa life, due to lack an adequate blood supply.

C. PROCEEDINGS AFTER THE TRIAL:

On the basis of said evidence, the trial court rendered a final judgment whereby it granted compensation to each plaitniff in the amount of $100,000.00 for the wrongful death of her mother. Moreover, it granted an additional amount of $280,000.000 in compensation for the horrendous

death, of Mrs. Julia Laboy Rosa, who was forced to be bloodless for a full day. (Appendix E) The total awarded amount was $1,680,000.00.

In granting said damages, the trial court declared unconstitutional Article 2 (a) Public Law Number 104 of 1955, populary known as Law of Litigation against the State, (32 LPRA section 3077 (a)) which limits the liability of the Commonwealth of Puerto Rico to the maximun amount of $150,000.00, per occurrence. In its judgment, the Court stated that said law violates both Due Process clause and Equal Protection clause for said Act grants the Commonwealth of Puerto Rico excesive privileges and rights as a litigant; and thus, justice and equity could not be properly served. The court expressed that the $150,000.00 limits in damages could not be adequate enough to compensate for the wrongfull death of Julia Laboy Rosa, and all the anguish and suffering to her children.

D. PROCEEDINGS IN APPEAL AT STATE LEVEL:

On the last day to file an appeal, the Commonwealth of Puerto Rico filed before the Circuit Court of Appeals of the Commonwealth of Puerto Rico a writ of appeal, whereby it only questioned the amounts awarded for the same violated Law Number 104 of 1955, which limits the amount to be awarded, per occurrence, in any claim made against the Commonwealth of Puerto Rico to $150,000.00, per event. A reply brief and/or reconsideration was filed by plaintiff, however the Circuit Court modified the judgment by reducing and limiting the amount of compensation that for

only Commonwealth of Puerto Rico can be liable: $150,000.00. However, the Circuit Court did not disturbed the findings of the trial court regarding the damages granted to each Plaintiffs. It should be noted that the damages granted were only lowered for codefendant Commonwealth of Puerto Rico, but not for other codefendants, such as. Doctor Luis Rodríguez González. This modification was done, notwithstanding the fact that, Commonwealth of Puerto Rico was extremely negligent and jointly responsible for the death of Julia Laboy Rosa. (See Appendix B)[4]

On May 17, 1999, Plaintiffs filed a writ of certiorari before the Supreme Court of Puerto Rico, whereby it requested that the Circuit Court's judgment be reversed and that Law Number 105 of 1955, be declared unconstitutional for it violated the Due Process Clause and the Equal Protection Clause. On October 13, 1999, the Supreme Court of Puerto Rico denied certiorari notwithstanding the constitutional arguments (Appendix A). However one of the Associate Justices, of said court, Mr. Fuste Berlingeri, could have granted the issurance of writ of certiorari. A motion of reconsideration was filed on October 29, 1999; however, the same was denied on November 23, 1999. (Appendix A-2).

---

[4] The Circuit Court of Appeal states that there was only one defendant namely Commonwealth of Puerto Rico. However, this is erroneous, for doctor Luis Rodríguez González was also found negligence and the judgment award by trial court was joint and severally not exclusively to the Commonwealth of Puerto Rico as said court erroneously interprets. However said physician has no economic capacity to compensate for said damages nor insurance coverage to act upon the same.

E. PROCEEDINGS BEFORE THE U.S. DISTRICT COURT AND U.S. COURT OF APPEALS

Immediately after the modification of the trial court's judgment by Circuit Court of Appeals of Puerto Rico, pertaining only the amount that codefendant Commonwealth of Puerto Rico could be liable, the Plaintiffs in this case filed a complaint, in the nature of a declaratory judgment, before the U.S. District Court, (Exhibit F). Said action seeked to declare unconstitutional Section 3077 (a), supra, for it also violated the Equal Protection Clause and Due Process Clause under the United States Constitution. A motion for dismissal was filed by Defendant Commonwealth of Puerto Rico thereby requesting dismissal under the Eleventh Amendment 's doctrine. In reply, plaintiff stated that said doctrine is not applicable when a party seeks as a declaratory judgment remedy to declare unconstitutional a statute which in its face violates the United States Constitution and the fundamental rights of a person. Judgment was entered thereby dismissing the complaint under the Eleventh Amendment doctrine relating to state immunity to be sued. (Appendix B). A timely appeal was filed before the U.S. Court of Appeal for the First Circuit, and after the parties filed their corresponding brief, the court notified its judgment on November 7, 2000, thereby denying the appeal on the sole ground that the federal courts lack jurisdiction in this matter under *Rooker v. Fidelity Trust, Co.* 263 U.S. 413, *District of Columbia Court of Appeals, et.al. v. Feldman, et.al.* 460 U.S. 462, 476. See Appendix A.

A disparity of grounds for jurisdictional dismissal on each judgment is clearly found.

REASONS TO GRANT THE WRIT OF CERTIORARI

A. Introduction:

The predicated Federal Constitutional issue, in the instant case raised by petitioners, among others, and as a matter of first impression and probably never before address by this Honorable Court, can be express as follow:

If the citizens of a state, whom are deprived of their life, limb, and welfare, and whom have suffered in their livelihood, as a consequence of culpable and negligent actions and/or omissions by Commonwealth of Puerto Rico, have a fundamental constitutional right to receive full and reasonable compensation, under Due Process and Equal Protection Clauses as expressed by the Fifth and Fourteenth Amendments. Opposed to this criteria, is the doctrine of sovereign immunity, established by an ordinary statute whereby the maximum aggregate amount in damages payable by the Commonwealth of Puerto Rico is limited to $150,000; notwithstanding the fact, that the damages in said occurrence and awarded by the trial court exceeded $1,680,000.00. Petitioners believe that this statute in limiting the amount of liability of a state is unreasonable, arbitrary and constitutionally unsound. Moreover, said statute has no constitutional grounds. The doctrine of sovereign immunity was created by judicial fiat in the United States Statutes; and later on, enacted as an ordinary

law. No constitutional provision exits to uphold the doctrine of sovereign immunity.

Furthermore, the partial compensation, as reduced by the Circuit Court of Appeal, is contrary to due process and equal protection, for it abridges and infringes the life, limb, property, welfare and livelihood of its citizens.

Moreover, Public Law Number 104, June 29, 1955, (32 LPRA 3077 et.seq.) Art. 2 (a) and (c) and 7, does not meet the compelling state interests and strict scrutiny standard of review, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of Constitution of United States. *Nibbia v. New York*, 1934, 291 U.S.A.-502

In addition, Public Law 104, is facially unconstitutional, for it violates the "taking clause" under the Fifth Amendment solely, or as incorporated into the Fourteenth Amendment. *Eastern Enterprises v. Apfels*, 118 S. CT 2131, P. 2146.

It should be noted that the Commonwealth of Puerto Rico throughout this case, including the state appeal process did not ask for a review of the factual findings or terms of the trial courts judgment entered against the defendants which amounted to $1,680,000.00 with legal interest, cost and expenses. The only issue contested by the Commonwealth of Puerto Rico, in the Circuit Court of Appeals of Puerto Rico, was the determination by the trial court which declare unconstitutional Article 2 (a) and 7 of Public Law 104, as amended, (32 LPRA 3077(A)). Said article limits the responsibility of the Commonwealth to $150,000.00 per occurrence and to $75,000.00

per person per occurrence. In its writ of appeal to the Circuit Court of Appeals, the Commonwealth of Puerto Rico does not the challenges the damages awarded to each co-plaintiff. In said proceeding, the Commonwealth only requests that the amount awarded, be reduced to the limit set forth in article 2 (a), supra, and solely to the state. Therefore, the rest of the defendants must meet the burden in paying full damages awarded to all plaintiffs. *United States of America v. Winstar, Corp.* (1976), 116 S. CT. 2431. (Emphasis supplied). Therefore, in terms monetary compensation awarded, the state will only pay 8.9% of the entire judgment while the rest of the Defendants will have to pay 91.1% of the judgment. This is unfair and grossly disproportional if we take into consideration that the Commonwealth of Puerto Rico was the principal culprit of the death of Julia Laboy. Thus, Article 2 (a), (Section 3077 (a), supra) is prima facie unconstitutional for it violates the Equal Protection clause among the defendants whereby one is granted a special privilege status over the others.

B. State and Federal Predicates:

The United States of America has a legal tradition, rooted in its vast jurisprudence and laws, that any party has a right to sue before the Courts in order to seek reasonable compensation for any culpable and/or negligent conduct committed by party who has caused damages. *Boodie v. Connecticut*, 401 US 327; *Logan v. Zimmerman Brush, Co.*, 455 US 422, 430. The Commonwealth of Puerto Rico has incorporated and codified this basic principle of constitutional lineage as a corner stone

of its legal system in Article 1802 and 1803 of Civil Code of Puerto Rico (31 LPRA 5142 and 5143).[5]

The monarchic and anachronistic legal concept that the "King can do no wrong" is still underlined in Public Law 104 of 1955 as amended, supra. Said act is not only unsound and oppressive but it not grounded in any historical, philosophical or legal justification[6]. Moreover said act, has no place in a democratic constitutional systems, in which sovereignty emanates from the People; and particularly unsound, in the case of the constitutional system of United States and Puerto Rico, whereby State is subordinated to its Citizens. Another cardinal principle established in both Constitutions of Commonwealth of Puerto Rico and/or the United States is the concept that economic values are subordinate to human values.[7]

---

[5] Vda. de Delgado v. Boston Insurance, 101 DPR 598

[6] The concept of sovereign immunity passed on from England to United States. There are many schoolar that sustained that incorporating of this doctrine in the American legal systems is a mystery due to the lack of historical and philosophical justification for it. See J.D. Lee and B.A. Lindahl, MODERN TORT LAW: LIABILITY AND LITIGATION, ILLINOIS, --CALAGHAN AND COMPANY, 1988, Vol. I, sec.16.01, page 553; The position of the majority of scholars sustained that's historical reasons for the states acceptances of the sovereign immunity doctrine was to avoid judicial collection of the --sustancial amount of -debts incurred by the states during the independence war. See Harper, James and Gray, "THE LAW OF TORTS", Boston, Little, Brown and Company 2 ed, 1986, Vol.5,page 596; -Jaffe, SUITS AGAINST GOVERNMENTS AND OFFICERS: SOVEREIGN IMMUNITY, 77 Harv. L. Rev. 1, 2-19 (1963).

[7] Commonwealth Constitution Preamble: We understand that the democratic system of government is one in which the

C. Fundamental Rights:

The Supreme Court of the Commonwealth of P.R. has consistantly held that the right to filed a cause of action for damages cause by tort feasor is defined as "property". See abundant case law: *Vda de Delgado v. Insurance Co.* 101 DPR 598 (1973); *Publio Díaz v. E.L.A.*, 106 DPR 854 (1978).

Article II, Section 7 of the Bill of Rights of the Constitutional of the Commonwealth of Puerto Rico provides in its relevant parts that:

> "The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man."

These fundamental rights are also incorporated in the Constitution of the United States in its Preamble as well as within the meaning of the Fifth and Fourteenth Amendment, although not in a clear cut manner as in Article II, Sec.7, of the Commonwealth of Puerto Rico.

Moreover, these fundamental rights are federalized, due to the unique creation of the Commonwealth of Puerto Rico and its constitution as approved by Congress. See Public Law 600, 81 Congress, July 3, 1950, c 446, 64 Stat 314; which established the Commonwealth; and the Joint Resolution of Congress of July 3, 1952, C567, 66 Stat 327, which ratified the Constitution of Commonwealth of Puerto Rico. Thus, the citizens and residents of the Commonwealth of Puerto Rico enjoy these fundamental rights both at state and

will of the people is the source of public power, the political order is subordinate to the rights of man, and the free participation of the citizen in collective decisions is assured), Article 1, sec.2.

federal level. Therefore, fundamental rights as clearly expressed in the Constitution of Commonwealth of Puerto Rico are federalized rights due to this unique Joint Compact between Congress and the People of Puerto Rico. See Mora v. Mejías, (1953), 206 F2d 371, for more elaborate historical interpretation of the creation of the Commonwealth of Puerto Rico and its Constitution.

Petitioners believe that the doctrine of sovereign immunity as expressed in Article II (a), supra, affects the fundamental rights under Article II, Sec. 7 of Commonwealth of Puerto Rico, and as well under the Fourteenth and Fifth Amendment of the Constitution of United states of America. Therefore, a genuine federal question exists before this Honorable Court, who is empowered and has jurisdiction to enter and resolve the questions presented in this writ. Petitioners believe that the Eleventh Amendment bar does not apply in this case for there are various prima facie Fourteenth Amendment violations by the Commonwealth of Puerto Rico when it enacted Law 104 of 1955, specifically, Article II (a), of said act (32 LPRA 3077 (a))

D. Equal Protection and Due Process Analysis:

The Commonwealth of Puerto Rico expressly violated the Fourteenth Amendment when its legislative branch enacted Article 2 (a), which deprived its citizens and residents their fundamental rights as expressed in both constitutional documents. Petitioners believe that said Act infringes

and abridges their privileges. The following constitutional rights are affected:

a. The right to sue and appear before a Court of Justice in order to seek redress of their grievances to its fullest.

b. The right to enjoy life, property and the pursuant of livelihood.

c. The right to receive just compensation for property taken or used by the state.

Professor Tribe has eloquently pointed out that the right to sue is a fundamental right and we cite:

> ...Second, and more intrinsic to the concept of equal protection, the inequalities may impinge directly on access to, or levels of, a right deemed fundamental in the specific sense that departures from equality in its availability or enjoyment are suspect. Such inequalities are particularly injurious when they interfere with either of the two major sources of political and legal legitimacy namely, voting and litigating--or with the exercise of intimate personal choices." Tribe, Lawrence, American Constitutional Law, p.1002. See also Boddie v. Conneticut,401 U.S. 37.(Emphasis supplied)

Taking said judicial concept, the Supreme Court of Puerto Rico both in Torres v. Castillo, 111 DPR 792, at pages 801-802 and Alicea v. Córdova, 117 DPR 676, have stated that "the right to

commence a civil action is a fundamental right and that any legislative classification affecting such right will have to withstand the strict judicial scrutiny analysis. Therefore, to limit the amount a person may sue and to seek reddress for its real damages, constitute a patent infringment of this fundamental right. In order words, a constitutional violation exists when a person has the right to sue but the same is grossly limited to a particular amount (in this case up to the amount of $150,000.00) notwithstanding the real fact that said person's real damages exceed $1,680,000.00, as assessed by a competent trial court.

Second, Petitioners respectfully understand that Article 2 (a) infringes in the right to enjoy life, property and livelihood. Said Act seriously restricts and affects the full and reasonable compensation the State should provide for the loss of life, limb, property and livelihood suffered by an aggrieved party. This is extremely evident in the case at bar, when plaintiff suffered the loss of both parents due to the gross negligence or conduct of the Commonwealth of Puerto Rico, it employees, officers and/or agents. These damages, not challenged directly by the state in its appeal, were awarded in the amount of $1,680,000.00; however the same were substantially reduced by the sole operation of Article 2 (a) supra, to the amount of $150,000.00. Therefore, plaintiff did not received full and adequate compensation; and therefore, justice was never duly and fully served. It was fustrated with a patent violation of the Fourteenth Amendment.

Third, Plaintiff respectfully request that Article 2 (a) be stricked down for it confiscatory in its nature; and thus, violative of both Fifth Amendment and Fourteenth. Petitioners agree that said Article creates a taking by the state without due compensation. This taking clearly affects the role of the judicial branch , which have the difficult and fundamental task in evaluating the real damages suffers by an aggrieved party. Article 2 (a) creates a constitutional clash between two branches of government, mainly the legislative and the judicial branch. The legislature has created in Articles 2 (a), a ceiling up to $150,000.00 per aggregate occurrence; while the judicial branch in its role as provider of true justice, now must reluctanly accept said unconstitutional ceiling notwithstanding the fact that the real damages exceed said limit. Thus, petitioner will be never fully compensated as well as any other person living in Puerto Rico who may become a victim of state negligence. Therefore, a travesty of justice occurs when full and reasonable compensation is negated by the state to its citizens who have been wronged by its negligence.

E. Other Due Process and
Equal Protection Considerations:

Also Due Process and Equal Protection Clause violated on the following areas:

First, Public Law 104 prohibits imposition of sanctions or legal interest against the state for its indifference and lack of due diligence in litigation before the Courts. As express by the trial court in

its judgment, it took more than 10 years to litigate a case in which the Commonwealth of Puerto Rico had no credible defense nor evidence. Moreover, the Commonwealth of Puerto Rico not even tendered any offer throughout the course of litigation of this case to the victims of its horrendous and gross negligence. It just sat back and became a passive litigant with no compelling interest to promptly resolve this case. Therefore, the law is per se in an open violation of procedural due process which requires not only a fair trial but a speedy one.

Public Law 104, creates a special class of litigant in violation of Equal Protection Clause, said act prohibits the imposition of attorney fees and or interest for the temerity of the Commonwealth of Puerto Rico, due to its lack of prosecution before the courts. Obviously, again we find that minimum procedural due process considerations are not meet. Moreover, again there is a violation under the Equal Protection Clause for it creates a special type of litigant before the Courts of Justice. Presently, the Commonwealth of Puerto Rico can not be sanctioned for its incompetence as a litigant. However, an ordinary citizen of the Commonwealth of Puerto Rico could suffer sanction and/or penalties in the form of attorneys fees or interest for untimely diligence or due to its inaction and/or omission is not complying with the orders and/or resolutions of the trial court. Again we find a violation of both Equal Protection and Due Process clauses.

Lastly, the Fourteenth Amendment was enacted and ratified to preserve the Union; and also to prohibit any other form of government. At the

time of its enactment, the United States of America was gravely suffering from the crucibles of a Civil War. The Southern States formed the Confederacy; and established an independent nation under the Articles of Confederation. More important, said Confederacy promoted the preservation of slavery as a form of property with all its grave and inhumane consequences.[8] Therefore, the Fourteenth Amendment expressly prohibits the enactment of any law (including any state constitutional and ordinary disposition), that abrogates or infringes in the privileges and immunity of any citizen of the United States. Therefore, the preservation of fundamental rights (Bill of Rights) as well as the present Republican form of government are paramount not only at the federal level but at the state level. Taking this analysis to the case at bar, Public Law 104, specifically Article 2 (a), creates another form of government to the citizens and residents of the Commonwealth of Puerto Rico. By incorporating the sovereign immunity doctrine, the Commonwealth of Puerto Rico has become in certain way an absolute monarch: whereby the "King can do no wrong". In setting the limits of $150,000.00 in the aggregate occurrence as well as granting other special consideration, supra, the Commonwealth of Puerto Rico is proclaiming itself that the absolute monarchic doctrine whereby in real damages payable by the state that may not exceed $150,000.00. Thus

---

[8] The Thirteenth Amendment prohibits slavery and any form thereof. This Amendment was the precursor of the Fourteenth Amendment which is the cornerstone of our present civil rights. --

Commonwealth of Puerto Rico is therefore immune in paying full and compensatory damage after $150,000.00. Therefore, any serious and grave harm committed by the state (over $150,000.00), the Commonwealth of Puerto Rico, has becomes equated to a King: It can not do any harm over $150,000.00 in damages. This by extension violates the present Republican form of government as conceived by Fathers of our Constitution as well as the creators of the Constitution of Commonwealth of Puerto Rico. (i.e. Congress, as per Congress Public Law 600, supra.)

This is constitutionally unacceptable; for it creates a different type of government structure not envisioned by our founding fathers. [9] Therefore Petitioners respectfully moves and request to this Honorable Court, that the doctrine of sovereign immunity (as embedded in Article 2 (a)) be declare unconstitutional for it creates another form of government.

F. Compelling State Interest Argument:

The Commonwealth of Puerto Rico in its writ of appeal before the Circuit Court of Appeals, specifically states, in citing *Defendini Collazo v. E.L.A.* 134 DPR 28, that there are two basic

---

[9] It should be noted that the United States of America has no limits in liability for tort actions it may produce to its citizens. This is also the situation on the majority of the states of the union. Therefore, Petitioners believe that there is a compelling national interest to resolve the sovereign immunity doctrine by this Honorable Court.

compelling state interest to declare constitutional Article 2 (a), to wit: a. That the payment of huge amount in damages awards could represent a grave risk to the public finances of the Commonwealth of Puerto Rico for could affect basic public services. (b). That the best method to grant compensation to its citizens is the current method adapted by the legislative, in order to protect the state from frivolous actions and its state treasury. (i.e. set a fix amount).

Petitioners at bar respectfully disagree on both counts: First, when *Defendini v. E.L.A.*, supra, was published, the judgments against the state where a small fraction of the entire fiscal budget. The public funds used for the payment of judgment when Article 2 (a) was amendment in 1982, represented only 0.14% of the total public funds paid by the Commonwealth of Puerto Rico of the approximately $13.7 billion dollars budget payment of the Commonwealth of Puerto Rico, only approximately $5.7 millions were paid as judgments due to Commonwealth of Puerto Rico negligence. However, the state could be more efficient by insuring the public risks and also creating safety controls and/or educating its officials. Under the modern theory of government, the state should act more efficiently in running its affairs.

Second, the method use to limit liability, i.e. a to fix amount per aggregate occurrence, is not the best method for it creates and promotes the following: a) A sense of injustice between the state and its citizens; b) Creates a sense of inequity and disquilibrium between the victims and the perpetrators of the negligence; c) Promotes a

condition whereby the economic values to be protected (i.e. the state public treasury) are above and beyond the fundamental rights of the citizens of a state. This inequity goes contrary to the Preamble of the Constitution of United States of America as well as that of the Constitution of Commonwealth of Puerto Rico; d) Article 2 (a) promotes a confiscatory tax in favor of the state when the victims of a state action are only granted 8.9% of the awarded damages. In equity and justice, the victims of a state wrongdoing should be fully compensated in their damages; and not partially Article 2 (a) is extremely confiscatory and violative of the Fifth Amendment provision regarding "taking".

Therefore, the Commonwealth of Puerto Rico should be held accountable for the real damages it has produce; and it must fully compensate the victims of its negligence. Article 2 (a) only purpose is to shift back or redistribute said damages either to the People of Puerto Rico as a whole or to the victims of said state negligence or worse to another co-defendant.

G. Compelling Reasons To Grant Certiorari:

Although review on a writ of certiorari is not a matter of right, but of judicial discretion, the case at bar has three main compelling reasons whereby review should be granted and as previously explained. We respectfully summarize them as follows:

a. Petitioners respectfully move this Honorable Court to grant review under Due Process Clause of the Fifth and Fourteenth Amendment of the United States Constitution which guarantees as a fundamental right life, property and livelihood of its citizens; and any statute (such as Article 2 (a), supra), which limits full, just and adequate compensation for the loss of life, limb and/or livelihood of its citizens, should be declared unconstitutional, supra.

b. Again Petitioners respectfully move this Honorable Court to grant review for Article 2 (a) in its application creates a special privilege status for the Commonwealth of Puerto Rico over other litigants as well as said act establishes a discriminatory and arbitrary immunity which directly violates the Equal Protection Clause as previously explained.

c. Moreover, petitioners respectfully believe that Article 2 (a) is clearly confiscatory and violates both the Fifth and Fourteenth Amendment of the United States Constitution for it reduces or takes away just and adequate compensation in an arbitrary and unreasonable manner from that established by a competent court.

Petitioners move this Honorable Court for there are a minority of state jurisdictions which also have partial sovereign inmunity; and the same are contrary to said fundamental constitutional concepts.

H. Jurisdictional Matters:

As previously stated, both the U.S. District Court and the U.S. Court of Appeal have dismissed

the present action on two different jurisdictional grounds namely: One under the Eleventh Amendment's state immunity doctrine; and the other under *Rooker v. Fidelity Trust, Co*, supra, case law doctrine regarding the scope and jurisdiction of the U.S. District Court, Appendix A and B.

However, the present request for declaratory judgment should be clearly distinguished from said doctrines on the following grounds:

First, the present case does not pretend to relitigate the facts and cause of action before the state trial court. On the contrary, it only seeks to reestablish the trial court judgment by declaring unconstitutional Section 3077 (a) for it violates fundamental rights granted by U.S. Constitution, supra and those federalized rights under the Constitution of the Commonwealth of Puerto Rico.

Second, the remedy seeked before the U.S. District Court is in the nature of a declaratory judgment, which seek the annulment of Section 3077 (a) for it violates fundamental rights of Plaintiff. Plaintiff respectfully understand that the Federal Courts have jurisdiction in matters concerning the violation of fundamental rights granted by the U.S. Constitution; and that a complaint filed as a declaratory judgment may prosper. It should be noted that the complaint was filed **after** the state trial court declare unconstitutional Section 3077 (a). Petitioners never challenge said finding until the Circuit Court of Appeals of Commonwealth of Puerto Rico revised the judgment regarding the constitutionality of Section 3077 (a). Said appellate judgment was entered on

October 27, 1999, while the complaint before the U.S. District Court was filed on June 4 1999. (Appendix F). To file said complaint before the date of Appellate judgment was entered could be considered moot and untimely.

Again Petitioner requested that federal jurisdiction be accepted by this Honorable Court for a grave violation of federal fundamental rights exists.

CONCLUSION

This case presents a question of exceptional national importance: Whether the doctrine of sovereign immunity, as expressed in Article 2 (a), supra, should prevail in light of the various violations of Fourteenth Amendment in relation to Due Process and Equal Protection Clauses. If the resolution of the Supreme Court of Puerto Rico as well as the opinion of the Circuit Court of Appeals of Puerto Rico is let to stand, a grave injustice will be permitted, the Petitioners will be never fully compensated in their damages; and all the citizens of the Commonwealth of Puerto Rico will be at the mercy of a statute (Article 2 (a) supra) which denies full and reasonable compensation to the victims of the gross negligence of the Commonwealth of Puerto Rico. To revoke both appellate state courts judgments and reinstate the original judgment of the Court of First Instance (i.e. the trial court), will bring forward a more equitable and just system in favor of all the persons who may suffered damages incurred by the Commonwealth of Puerto Rico. The limitation establish by Article 2 (a) is not in accordance with

our times nor our constitutional systems whereby the fundamental rights of a person are over the interest of the State.

Accordingly Petitioners respectfully request that their petition of Certiorari be granted.

RESPECTFULLY SUBMITTED.

CERTIFICATION: I hereby certified that in this date notified this document at: Griselle González, Federal Litigation Division, Depto. of Justice, PO Box 9020192, San Juan, Puerto Rico 00902-0192.

In San Juan, Puerto Rico at 6 days of April of 2001.

RAFAEL A. OLIVERAS LOPEZ DE VICTORIA
ATTORNEY -PLAINTIFF - PETITIONERS
EDIF. ASOC. DE MAESTROS, SUITE 609
452 PONCE DE LEON AVE.
SAN JUAN, PUERTO RICO 00918
USDC-PR 119606
TELEPHONE (787) 764-3280
FAX: (787) 763-8328